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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 336 of 1990

DATE OF JUDGMENT: 12.12.90

BETWEEN:

BOLA SUNDARA SHETTY

..

Applicant

and

1. The Chief of Naval Staff,
Naval Headquarters,
New Delhi.
2. The Flag Officer Commanding-in-Chief,
Eastern Naval Command,
Visakhapatnam.
3. The Admiral Superintendent,
Naval Dockyard,
Visakhapatnam-530014.
4. The Deputy General Manager (Personnel)
Naval Dockyard,
Visakhapatnam-530014.
5. Shri R.G. Sen, C.T.A. (C),
Inquiry Officer, Naval Dockyard,
Visakhapatnam.

..

Respondents

FOR APPLICANT: Mr. P.B. Vijaya Kumar, Advocate

FOR RESPONDENT: Mr. Naram Bhaskar Rao, Addl. CGSC.

CORAM: Hon'ble Shri J. Narasimha Murthy, Member (Judl.)
Hon'ble Shri R. Balasubramanian, Member (Admn.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J. NARASIMHA MURTHY, MEMBER (JUDL.)

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This is a petition filed by the petitioner for a relief to declare the proceedings leading upto and including the proceedings No. PES/7401/BSS/SFM dated 1.3.1990 as arbitrary, illegal and without jurisdiction and consequently quash the same and also direct the disciplinary authority to take action on the report pending before him according to law. The contents of the petition are briefly as follows:-

The applicant joined the Naval Dock Yard, Bombay as an apprentice in the year 1951. After successful completion of the said course for five years, equivalent to Diploma in Electrical Engineering, he joined during March 1956 as Electrical Fitter Grade-II. Subsequently, he was promoted to Electrical Fitter Grade-I in July 1959. He was further promoted as Chargeman (Electrical) in 1963 and subsequently he was promoted as Foreman in 1970. In 1966 he was sent on deputation to U.S.S.R., for undergoing training in Submarine and Petya Course for 16 months. After his return in April 1969 he was posted to Naval Dock Yard, Visakhapatnam. In October 1975 he was promoted as Senior Foreman (L). On 5.12.1984 due to non-conduction of D.P.C., for a period of two years, he was given adhoc promotion as C.T.A.(L) against an existing permanent vacancy vide Ministry of Defence letter dated 18.6.1983. Subsequently, all of a sudden on 14.5.1986 he was reverted and posted back to Naval Dockyard as Senior Foreman (L) while continuing his juniors on adhoc basis. No reasons have been assigned despite representations made by him. On 28.12.1987, a charge sheet has been served on him framing certain charges. The applicant submitted his reply to the charge sheet dated 19.12.1987 denying all the charges levelled against him. Subsequently, an Inquiry Officer was appointed and ^{he} conducted the inquiry. The Inquiry Officer

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submitted his report on 8.11.1989. The disciplinary authority on receipt of the said report has to act upon it and take a decision in either way in terms of Rule 15 of the C.C.S. (C.C.A) Rules, but he referred the matter back to the Inquiry Officer to record the reasons as to why there are contradictions in the evidence of P.W. 1 and P.W.4 in their evidence recorded before the regular enquiry and fact finding enquiry. Basing on the said request of the disciplinary authority, the Inquiry Officer again entertained the matter. Aggrieved by that, the petitioner filed the present petition to direct the disciplinary authority to take action on the report pending before him according to law.

2. The respondents filed a counter with the following contentions:-

The decision of the disciplinary authority to remit the case back to the Enquiry Officer is not contrary to law nor it is intended to fill up the gaps in the evidence. According to Rule 15(1) of the CCS (CCA) Rules, 1965, the disciplinary authority if it is not the Inquiring authority, may for reasons recorded in writing, remit the case to the Inquiring authority for further inquiry. In pursuance of the powers conferred upon the disciplinary authority by Rule 15(1) of the CCS (CCA) Rules, 1965, the disciplinary authority remitted the case back to the Inquiring authority as there are contradictions in the statements made by PW 1 and PW 4 before the Board of inquiry and the inquiry officer which have not been clarified by the Presenting Officer during the course of inquiry. With a view to clarify these contradictory statements made by these two prosecution witnesses and to arrive at the truth, the case was remitted back. Remission of the case back to the inquiring authority is neither illegal, malafide nor is it intended to prolong the matter further and deny promotion ~~xxx~~ to the applicant.

3. Mr

To

1. The Chief of Naval Staff,
Naval Headquarters,
New Delhi.
2. The Flag Officer Commanding-in-Chief,
Eastern Naval Command,
Visakhapatnam,
3. The Admiral Superintendent,
Naval Dockyard,
Visakhapatnam - 530 014.
4. The Deputy General Manager (Personnel)
Naval Dockyard,
Visakhapatnam - 530 014.
5. Shri R.G.Sen, C.T.A.(C),
Inquiry Officer, Naval Dockyard,
Visakhapatnam.
6. One copy to Mr. P.B.Vijaya Kumar, Advocate,
1-8-7/13, Chikkadapally, Hyderabad - 20.
7. One copy to Mr. Naram Bhasker Rao, Addl. CGSC.
8. One copy to The Hon'ble Mr. R.Balasubramanian,
Member (Admn.), C.A.T., Hyderabad Bench,
Hyderabad.
9. One Spare Copy.

srr/

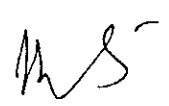
10/10/13
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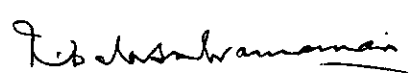
In view of the above circumstances, there are no merits in the application and the same may be dismissed.

3. Heard Shri P.B.Vijaya Kumar, learned counsel for the applicant and Shri N.Bhaskar Rao, Additional Standing counsel for the respondents/department. Shri Vijaya Kumar for the applicant argued that remitting back the case to the Inquiry Officer for clarification of the contradictions between PW 1 and PW 4 is not proper; on the part of the disciplinary authority. Once it is sent to the disciplinary authority, the disciplinary authority has to take action basing on the material available on record and he cannot send back to the Inquiry Officer to rectify defects in the evidence of the PW 1 and PW 4. So, on that ground alone, he wants to direct the disciplinary authority to take action on the report pending before him and the case may be disposed of without prejudice to the other aspects raised in the application by the applicant. Shri Bhaskar Rao appearing for the respondents expressed that there is no wrong in sending the report to the Inquiry Officer seeking clarification on a particular aspect but however he has no objection to direct the disciplinary authority to dispose of the matter basing on the Inquiry Officer's report. So, accordingly, we dispose of the matter without prejudice to the other contentions raised in the application with a direction to the disciplinary authority to take action on the report pending before him according to law.

4. Accordingly, the application is disposed of. No costs.




(J.NARASIMHA MURTHY)
Member(Judl.)



(R.BALASUBRAMANIAN)
Member (Admn.)

Dated: 12/15 December, 1990.


Deputy Registrar (J)

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CHECKED BY
TYPED BY

APPROVED BY
COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. B. N. JAYASIMHA : V.C.
AND

THE HON'BLE MR. D. SURYA RAO : M(J)
AND

THE HON'BLE MR. J. NARASIMHA MURTY : M(J)
AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

DATE: 24-9-12/12/90

ORDER / JUDGEMENT:

M.A. / R.A. / C.A. / No.
in

T.A. No.

W.P. No.

O.A. No. 336/90

Admitted and Interim directions
issued.

Allowed.

Dismissed for default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A. Ordered / Rejected

No order as to costs

HYDERABAD BE